TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 352.

JAMES L. UTTER AND ELIZABETH B. VOORHEES, APPELLANTS,

vs.

B. J. FRANKLIN, GOVERNOR; C. P. LEITCH, AUDITOR; AND C. M. BRUCE, SECRETARY, LOAN COMMISSIONERS OF THE TERRITORY OF ARIZONA.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED APRIL 8, 1895.

(16,556.)

(16,556.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 777.

JAMES L. UTTER AND ELIZABETH B. VOORHIES, APPELLANTS,

vs.

B. J. FRANKLIN, GOVERNOR; C. P. LEITCH, AUDITOR AND C. M. BRUCE, SECRETARY, LOAN COMMISSIONERS OF THE TERRITORY OF ARIZONA.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 9, 1897.

1 Supreme Court.

TERRITORY OF ARIZONA, *ss*:

I, J. L. B. Alexander, clerk of the supreme court of the Territory of Arizona, do hereby certify the annexed instrument to contain a full, true, and correct copy of the petition for a writ of mandamus in the matter of the application of James L. Utter and Elizabeth B. Voorhies for a writ of mandamus against Benjamin J. Franklin, C. P. Lietch, and C. M. Bruse, loan commissioners of the Territory of Arizona, filed in the supreme court of Arizona Territory, and of the respondents' answer to said petition and of the demurrer to said answer and of all the proceedings had in said court in said cause, and that the citation hereunto annexed is the original citation issued in said cause and lodged in my office: and I further certify that no opinion has been filed by said court in said cause in my office at this date.

Seal Supreme Court of Arizona.

In testimony whereof I have hereunto set my hand and affixed the official seal of said supreme court of Arizona, at Phœnix, the capital of Arizona, this 30th day of March, A. D. 1897.

J. L. B. ALEXANDER, *Clerk.*

2 In the Supreme Court in and for the Territory of Arizona.

JAMES L. UTTER and ELIZABETH B. VOORHIES, Plaintiffs,
vs.
BENJAMIN J. FRANKLIN, C. P. LEITCH, and C. M. BRUCE, Loan Commissioners of the Territory of Arizona, Defendants.

The plaintiffs petition the court and allege—

That plaintiff James L. Utter resides at Oak Hill, in the State of New York, and Elizabeth B. Voorh*h*ies resides in the city of New York, in said State, and that defendants reside in the city of Phœnix, Arizona Territory, and that they constitute and compose the loan commissioners of the Territory of Arizona, and are acting as such.

II.

The plaintiffs allege that by virtue of the authority of the act of the Legislative Assembly of the Territory of Arizona entitled "An act to promote the construction of a certain railroad," approved February 21st, 1883, the county of Pima, in said Territory, did, on the first day of July, A. D. 1883, issue its bonds, each for the
3 sum of one thousand dollars, to the number of one hundred and fifty, and which said bonds are numbered consecutively 1 to 150, inclusive, and all of said bonds are in the same words and figures, of which the following is a copy, to wit:

1—777

"UNITED STATES OF AMERICA, *Territory of Arizona, County of Pima.*

"One thousand dollars. One thousand dollars.

"The County of Pima in the Territory of Arizona, for value received promises to pay to the Arizona Narrow Gauge Railroad Company, or bearer, at the office of the treasurer of said county, in the city of Tucson, on the first day of July, A. D. one thousand nine hundred and three, the sum of one thousand dollars in lawful money of the United States, with interest thereon at the rate of seven per cent. per annum, said interest payable at the office of the treasurer of Pima county, semi-annually, on the first day of January, and the first day of July in each year, on presentation and surrender of the interest coupons hereto attached.

"This bond is issued by the board of supervisors of said county of Pima, under and by virtue of an act of the legislature of Arizona entitled 'An act to promote the construction of a certain railroad' approved by the governor thereof the 21st day of February A. D. 1883, and this bond is one of a series of two hundred issued in pursuance of said act and exchanged for a like number of bonds of said railroad company of like amounts, bearing like interest, and running like time as the bonds of which this is one.

"In testimony whereof, the said county by its board of supervisors has caused this bond and the coupons hereto attached, to be signed by the chairman of the board of supervisors, and countersigned by the clerk of said board, and by the county recorder of the said Pima county, and the said clerk has affixed hereto the seal of said county, and the said recorder has affixed hereto the seal of said county recorder's office this first day of July, A. D. 1883.

"JAMES H. TOOLE,
"*Chairman Board Supervisors.*
"CHAS. R. DRAKE,
"*County Recorder.* [SEAL.]

"WILLIAM J. OSBORN,
"*Clerk Board of Supervisors.* [SEAL.]"

And to each of said bonds were attached forty coupons numbered consecutively 1 to 40, inclusive, each for the sum of
4 thirty-five dollars, and the first one became due January 1st, 1884, and the next one six months thereafter, and so on; one became due on the first day of January and one the first day of July in each successive year, the last one on the first day of July, A. D. 1903; and delivered the same, with the coupons attached, to the Arizona Narrow Gauge Railroad Company, as is provided for in said act, in exchange for a like number and denomination of bonds of that company, with like coupons thereto attached.

And plaintiffs allege that the said railroad company, then the owner of said bonds, sold the same in open market for a good and valuable consideration, and after divers sales and deliveries the plaintiffs, for good and valuable consideration then and there paid, purchased the said bonds and all the coupons thereof, except the

first seven, in open market, and the same were delivered to the plaintiffs, who are now the owners of the same.

Plaintiffs allege that none of said bonds or the coupons attached thereto (except the first seven) have been paid, and the amount of the principal of each bond and matured coupons thereof owned by plaintiffs July 1st, 1896, was $1,665.00, and on January 1st, 1897, the sum of $1,700.00, so that the total of principal and matured coupons July 1st, 1896, was $249,750.00, and on January 1st, 1897, is $255,000.00.

5 Plaintiffs allege that each of said coupons bear interest at the rate of seven per cent. per annum from the date of maturity, aggregating an amount up to July 1st, 1896, of $34,964.50, and all aggregating—that is to say, principal, coupons, and interest on coupons on January 1st, 1897—the sum of $289,964.50.

Plaintiffs allege that by law it is the duty of defendants to provide for the redeeming and refunding of the said county indebtedness, and to issue bonds for said indebtedness in redemption of the said bonds, coupons, and interest as aforesaid; and on the 12th day of December, A. D. 1896, the plaintiffs made demand on defendants that the defendants, as loan commissioners of the Territory of Arizona, issue bonds as provided by law in exchange for said bonds, coupons, and interest as aforesaid.

Which said demand was made in writing by serving on the defendants and causing to be filed with the clerk of said commission a paper in writing, a copy of which is herewith filed and made a part hereof and marked "Exhibit A."

And the plaintiffs allege that the defendants have failed and refused hitherto to comply with said request and demand and hitherto and now refuse so to do; that plaintiff- have not a plain, speedy, and adequate remedy in the ordinary course of law.

Plaintiffs therefore pray that there issue out of this court an alternative writ of mandamus, directing and requiring the defendants, acting as the loan commissioners of the Territory of

6 Arizona, to issue bonds in exchange for said indebtedness or show cause before said court why the peremptory writ of mandamus shall not issue commanding them to perform their said duty, and they pray for such other and further relief as the law may give them.

By BARNES & MARTIN,
Attorneys for Plaintiffs.

TERRITORY OF ARIZONA, }
County of Pima, } ss:

W. H. Barnes, being first duly sworn, on oath states that he has heard read the foregoing complaint and knows the contents thereof, and that the same is true in substance and in fact. He also states that he is the authorized agent of the plaintiffs in this behalf and makes this affidavit for them.

W. H. BARNES.

Subscribed and sworn to before me this 24th day of December, A. D. 1896.

[SEAL.] JOHN H. MARTIN,
Notary Public, Pima County, A. T.

(Endorsement:) No. 546. In the supreme court, Territory of Arizona. James L. Utter and Elizabeth B. Voorhies, plaintiff-, *vs.* Benjamine J. Franklin, C. P. Leitch, & C. M. Bruce, loan commissioners of the Ter. of Arizona, def't-. Petition. Filed Dec. 31, 1896. J. L. B. Alexander, clerk.

7 Whereas, by virtue of the authority of the act of the Legislative Assembly of the Territory of Arizona entitled "An act to promote the construction of a certain railroad," approved February 21st, 1883, the county of Pima, in said Territory, did, on the first day of July, A. D. 1883, issue its bonds, each for the sum of one thousand dollars, to the number of one hundred and fifty, numbered consecutively 1 to 150, inclusive, and all of said bonds are in the same words and figures, of which the following is a copy, viz:

UNITED STATES OF AMERICA, *Territory of Arizona, County of Pima.*

One thousand dollars. One thousand dollars.

The County of Pima in the Territory of Arizona, for value received promises to pay to the Arizona Narrow Gauge Railroad Company, or bearer, at the office of the treasurer of said county, in the city of Tucson, on the first day of July, A. D. one thousand nine hundred and three, the sum of one thousand dollars in lawful money of the United States, with interest thereon at the rate of seven per cent. per annum, said interest payable at the office of the treasurer of Pima county, semi-annually, on the first day of January, and the first day of July in each year, on presentation and surrender of the interest coupons hereto attached.

This bond is issued by the board of supervisors of said county of Pima, under and by virtue of an act of the legislature of Arizona entitled "An act to promote the construction of a certain railroad" passed by the Legislative Assembly of the Territory of Arizona, and approved by the governor thereof the 21st day of February, A. D. 1883, and this bond is one of a series of two hundred issued in pursuance of said act and exchanged for a like number of bonds of said railroad company of like amounts, bearing like interest, and running like time as the bonds of which this is one.

In testimony whereof, the said county by its board of supervisors has caused this bond and the coupons hereto attached, to be signed by the chairman of the board of supervisors, and countersigned by the clerk of said board, and by the county recorder of the
8 said county of Pima, and the said clerk has affixed hereto the seal of said county, and the said recorder has affixed

hereto the seal of said county recorder's office this first day of July, A. D. 1893.

JAMES H. TOOLE,
Chairman Board Supervisors.
CHAS. R. DRAKE,
County Recorder. [SEAL.]

WILLIAM J. OSBORN,
Clerk of Board of Supervisors. [SEAL.]

And to each of said bonds were attached forty coupons, numbered consecutively from 1 to 40, each for the sum of thirty-five dollars, and the first one became due January 1st, 1884, and the next one six months thereafter, and so on; one became due on the first day of January and one the first day of July in each successive year; the last one on the first day of July, A. D. 1903;

And delivered the same, with the coupons attached, to the Arizona Narrow Gauge Railroad Company, as is provided for in said act;

And whereas the said bonds and the interest coupons are now in the possession of and the property of James L. Utter, who resides in Oak Hill, New York, and Elizabeth B. Voorhies, who resides in New York city, and who purchased the same in open market for good and valuable consideration by them paid to the then holders thereof;

And whereas none of the said coupons attached to said bonds have been paid; the whole of said bonds and all of the coupons attached, from coupons No. 8 to No. 27, inclusive, is the
9 amount of principal and interest accrued up to January 1st, 1897, unpaid, viz., the sum of $1,700.00 on each of said one hundred and fifty bonds, making a total of $255,00-.00 of principal and interest, as aforesaid, of the said bonds and said coupons, other evidences of indebtedness which were heretofore as aforesaid issued under the said authority of the legislature of Arizona; all of which said bonds and coupons are here and now offered for inspection by the loan commissioners;

And whereas, by act of Congress entitled "An act amending and extending the provisions of an act of Congress entitled 'An act approving, with amendments, the funding act of Arizona, approved June twenty-fifth, eighteen hundred and ninety,' and the act amendatory thereof and supplemental thereto, approved August third, eighteen hundred and ninety-four," approved June 6th, 1896, as follows:

Be it enacted, etc., That the provisions of the acts of Congress, approved June 25th, 1890 and August 3rd, 1894, authorizing the funding of certain indebtedness of the Territory of Arizona, are hereby amended and extended so as to authorize the funding of all outstanding obligations of the Territory, and the counties, municipalities, and school districts thereof, as provided in the act of Congress approved June 25th, 1890, until January 1st, 1897, and all outstanding bonds, warrants and other evidences of indebtedness of the Territory of Arizona, and the counties, municipalities, and school districts thereof, heretofore authorized by legislative enact-

ments of said Territory, bearing a higher rate of interest than is authorized by the aforesaid funding act, approved June 25th, 1890, and which said bonds, warrants and other evidences of indebtedness have been sold or exchanged in good faith in compliance
10 with the terms of the acts of the legislature by which they were authorized, shall be funded into the lower-interest-bearing bonds, as provided by this act.

SEC. 2. That all bonds and other evidences of indebtedness heretofore funded by the loan commission of Arizona under the provisions of the act of Congress, approved June 25th, 1890, and the act amendatory thereof and supplemental thereto, approved August 3rd, 1894 are hereby declared to be valid and legal for the purposes for which they were issued and funded; and all bonds and other evidences of indebtedness heretofore issued under the authority of the legislature of said Territory, as hereinbefore authorized to be funded, are hereby confirmed, approved, and validated, and may be funded as in this act provided, until January 1st, 1897; provided, that nothing in this act shall be so construed as to make the Government of the United States liable or responsible for the payment of any of said bonds, warrants, or other evidences of indebtedness by this act approved, confirmed and made valid and authorized to be funded. Approved June 6, 1896.

And whereas, on the 12th day of December, A. D. 1896, the undersigned made a demand in writing on the board of supervisors of the said county of Pima that they report to the loan commissioners of the Territory of Arizona the said outstanding bonds and indebtedness for the purpose of —, and that said loan commissioners may, as by law they are required to do, provide for the redeeming or refunding of the county indebtedness aforesaid;

And whereas the said board of supervisors of said county have hitherto failed to comply with said demand, and have failed hitherto to make said report, and have hitherto failed to make such demand on the loan commissioners of said Territory:

Now, therefore, we, the undersigned, owners of said bonds
11 and coupons, having purchased the same for good and valuable consideration, hereby and now in writing demand that you, the said loan commissioners of the Territory of Arizona, require an official report from the board of supervisors of said county of Pima of their bonded and outstanding indebtedness, including the indebtedness aforesaid, as evidenced by said bonds and coupons.

And we also demand that said loan commissioners shall provide for the redeeming or refunding of the said county indebtedness, notwithstanding the said board of supervisors have failed to do their duty as aforesaid, and shall issue bonds for said indebtedness in redemption of the same as required by law.

And we, here and now having said bonds and coupons in hand for inspection and delivery, show the same to said loan commissioners and offer to deliver the same in exchange for bonds of the Territory as provided by law, viz., section seven of the act of March 19th,

1891, of Arizona, of the Laws of 1891, page 123, as provided for by the act of Congress approved June 25th, 1890, aforesaid.

Dated Phœnix, Arizona, December 14th, A. D. 1896.

JAMES L. UTTER,
ELISABETH B. VOORHIES,
Loan Commissioners of the Territory of Arizona.
W. H. BARNES,
JOHN H. MARTIN,
Attorneys for Petitioners.

To B. J. Franklin, governor; C. P. Leitch, auditor; C. M. Bruce, secretary of the Territory.

12 (Endorsement:) No. 546. In the supreme court, Territory of Arizona. James L. Utter and Elizabeth B. Voorhies, plaintiff-, *vs.* Benjamine J. Franklin, C. P. Leitch, and C. M. Bruce, loan commissioners of the Territory of Arizona, defendants. Plaintiffs' "Exhibit A." A duplicate of the within filed in the office of the secretary of the loan commission of Arizona this 14th day of December, 1896. Alfred Franklin, secretary of loan commission. Filed December 31st, 1896. J. L. B. Alexander, clerk.

In the Supreme Court of the Territory of Arizona.

JAMES L. UTTER and ELIZABETH VOORHEIS, Plaintiffs, *vs.* BENJAMIN J. FRANKLIN, C. P. LEITCH, and C. M. BRUSE, Loan Commissioners of Arizona, Defendants.	Answer and Response to Writ.

The defendants named in the above-named cause came, and, for answer to the complaint and peti-on for mandamus herein, say:

First.

13 They except to the sufficiency of the said petition herein and demur thereto for the following reasons, to wit:

1. Because the said complaint and petition fails to state facts sufficient to constitute a cause of action, and therefore mandamus in this action will not lie.

2. Because said petition seeks to compel the funding of bonds that were issued contrary to law and in violation of the grant of powers given territorial legislatures by the laws of the Congress of the United States.

3. Because the said petition seeks to compel the funding of bonds heretofore declared void by this court and by the Supreme Court of the United States, all of which this court judicially knows.

Wherefore defendants pray judgment.

Second.

For *for* a further and second defense herein defendants aver and give the court to know that the said bonds herein declared on in this

action and for the funding of which this suit is brought to compel are the same identical bonds that were involved in the suit in which —— Lewis was plaintiff and The County of Pima, in the Territory of Arizona, was defendant, in which suit was brought on 2,250 coupons of said bonds in the district court of the said county
14 of Pima and which were attached to these same bonds, and in which suit these same bonds were placed in issue, and the payment of which, together with the said coupons, was resisted on the ground that the said bonds were issued contrary to and in violation of law, and that the same were therefore void, and that the same and each and all of the said bonds were in said action, each and every one of the same, together with the said coupons thereto attached, by the judgment of the said court, after due deliberation, in open court adjudged to be void and of no binding force and obligation on the said county of Pima, and that the said action was by appeal carried from said court to the supreme court of the Territory of Arizona, and was there on the 14th of April, 1893, by said supreme court affirmed, and the said bonds and the said coupons thereto attached were again and by that court declared void and of no binding effect on the said county of Pima.

That an appeal was taken from the said decision of the said supreme court of the Territory of Arizona to the Supreme Court of the United States, and in that court, at the October term of the same, 1894, these same identical bonds were declared void and of no binding force and effect against the said county of Pima. Therefore defendants say and plead *res adjudicata*, and that therefore this action cannot be maintained.

15 Wherefore defendants pray the court that plaintiffs take nothing by this action; that their petition be dismissed, and that defendants go hence without day and have all of their costs in and about this action expended, and for all general relief.

B. J. FRANKLIN,
C. P. LEITCH, AND
C. M. BRUCE,
Loan Commissioners and Defendants,
By the ATTORNEY GENERAL.

(Endorsement:) James L. Utter and Elizabeth Voorhies *vs.* B. J. Franklin *et al.*, loan commissioners. Answer & response. Filed January 19, 1897. J. L. B. Alexander, clerk.

In the Supreme Court of the Territory of Arizona.

JAMES L. UTTER and ELIZABETH VOORHIES, Plaintiffs,
vs.
BENJAMIN J. FRANKLIN, C. P. LEITCH, and C. M. BRUCE, Loan Commissioners of Arizona, Defendants.

And now comes the said plaintiffs, by Barnes & Martin, their attorneys, and to the said second defense of the said defend-
16 ants in cause heretofore filed *and* demur and say that the same does not state facts sufficient to constitute any defense

to said cause, nor does the same show any cause or reason why the writ of mandamus prayed for in this cause should not issue; and they therefore pray that the said writ do issue as prayed for, notwithstanding the said defense set up in said second answer.

By BARNES & MARTIN,
Attorneys for Plaintiffs.

(Endorsements:) No. 546. In the supreme court of the Territory of Arizona. James L. Utter and Elizabeth Voorhies, plaintiffs, *vs.* Benjamin J. Franklin, C. P. Leitch, and C. M. Bruce, loan commissioners of Arizona, defendants. Demurrer to answer. Filed January 19, 1897. J. L. B. Alexander, clerk. Barnes & Martin, attorneys for plaintiffs.

17 In the Supreme Court of the Territory of Arizona.

JAMES L. UTTER and ELIZABETH B. VOORHIES, Plaintiffs & Petitioners, *vs.* BENJAMINE J. FRANKLIN, C. P. LIETCH, and C. M. Bruce, Loan Commissioners of the Territory of Arizona, Defendants.	Petition for a Writ of Mandamus.

Be it remembered that on the 13th day of January, 1897, the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in the above-entitled cause, viz:

It is ordered that the hearing of this cause be set for January 21, 1897.

Be it further remembered that on the 21st day of January, 1897, the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in said above-entitled cause, viz:

In this cause it is ordered that hearing thereof be reset for tomorrow morning, January 22, 1897.

18 Be it further remembered that on the 22nd day of January, 1897, that same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in the above-entitled cause, viz:

This cause came on to be heard this day and was argued by Mr. W. H. Barnes, for petitioners, and argument ordered continued till after recess this afternoon.

The court having reconvened after recess, at 2 o'clock p. m., the following further proceedings were had in said court in said cause, viz:

The argument in this cause was resumed by Mr. Barnes, for petitioners, and by Mr. C. W. Wright, for defendants, who, on motion of the attorney general, was entered as associate counsel for defendants herein and argument was continued until next Thursday, January 28th, 1897.

Be it further remembered that on the 29th day of January, 1897,

the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in the above-entitled cause, viz:

This cause came on to be argued on this day. Mr. Barnes resumed his argument for petitioners and cause was ordered submitted.

19 Be it further remembered that on the 23rd day of February, 1897, the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in the above-entitled cause, viz: This cause having been heretofore argued by respective counsel for petitioner- and defendants and submitted and by the court taken under consideration, and the court having considered the same and being fully advised in the premises, it is ordered that the petition for a writ of mandamus herein filed be, and the same is hereby, denied; and it is further ordered and adjudged that defendants recover against the petitioner- herein their costs in this court incurred in this cause, taxed at $12.50; and be it further remembered that on the 25th day of February, 1897, the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said court in the above-entitled cause, viz: In this cause Mr. W. H. Barnes, attorney for petitioners herein, in open court gave notice of appeal in this cause to the Supreme Court of the United States, and prayed for an allowance of such an appeal; whereupon it was ordered by the court that an appeal be granted petitioners herein to the Supreme Court of the United States from the order and judgment of this court upon

20 said petitioners filing with the clerk of this court a bond in the sum of one thousand dollars, approved according to law.

In the Supreme Court of the Territory of Arizona.

JAMES L. UTTER *et al.*, Petitioners,
vs.
THE LOAN COMMISSIONERS OF ARIZONA, Defendants. } Motion.

Now come the petitioners, by William H. Barnes, their attorney, and here and now in open court gives notice of appeal in said cause to the Supreme Court of the United States, and asks that the said notice be entered upon the minutes of this court.

Petitioners also pray that this court will grant an appeal from this court to the Supreme Court of the United States upon giving, executing, and filing with the clerk a bond, to be approved according to law, in the penal sum of one thousand dollars.

By W. H. BARNES,
Attorney for Petitioners.

21 (Endorsement:) In supreme court of Territory of Arizona. James L. Utter *et al.*, petitioners, *vs.* B. J. Franklin and The Loan Commissioners of Arizona, respondents. Petition for allowance of appeal to U. S. Supreme Court. Filed Feb'y 25, 1897. J. L. B. Alexander, clerk.

In the Supreme Court of the Territory of Arizona.

JAMES L. UTTER *et al.*, Petitioners,
vs.
THE LOAN COMMISSIONERS OF ARIZONA, Respondents. } Affidavit.

William H. Barnes, being duly sworn, says that he is the attorney and agent for the petitioners in the above-entitled cause. He states that he knows the issues raised in said cause and the amount involved in this suit.

He states that the amount involved in this suit is one hundred and fifty thousand dollars and bonds, issued as alleged in the petition, now held by the petitioners, together with the interest on the same, as 7 % per annum, being a total of something over one hundred and eighty thousand dollars.

22 W. H. BARNES.

Subscribed and sworn to before me this 25th day of February, A. D. 1897.

CHAS. H. HOLMES,
[SEAL.] *Notary Public.*

(Endorsements:) In the supreme court of Territory of Arizona. James L. Utter *et al.*, petitioners, *vs.* B. J. Franklin and The Loan Commissioners of Arizona. Affidavit of value. Filed Feb'y 25, 1897. J. L. B. Alexander, clerk.

In the Supreme Court of the Territory of Arizona.

JAMES L. UTTER *et al.*, Petitioners,
vs.
THE LOAN COMMISSIONERS OF ARIZONA, Respondents.

Now come the petitioners in this cause, by William H. Barnes, their attorney, and alleges that there is a manifest error in
23 the records of the proceedings in said cause in said court, in this, to wit:

First. That the court erred in holding that the petition did not state facts sufficient to sustain the remedy asked for.

Second. That the court erred in denying the mandamus asked for.

Third. That the court erred in sustaining the demurrer to the petition in said cause.

Fourth. That the court erred in refusing to sustain the demurrer to the special defense set up in bar in the answer of respondents.

The petitioners therefore pray that the said cause be reversed, and that such judgment be rendered as the facts alleged and the remedy asked for requires.

By W. H. BARNES,
Attorney for Petitioners.

(Endorsement:) No. 546. In the supreme court, Territory of Arizona. James L. Utter *et al.*, petitioner-, *vs.* B. J. Franklin *et al.*, etc., defendants. Assignment of errors. Filed Feb'y 25, 1897. J. L. B. Alexander, clerk.

24 In the Supreme Court in and for the Territory of Arizona.

JAMES L. UTTER and ELIZABETH B. VOORHIES, Petitioners and Appellants,
vs.
THE LOAN COMMISSIONERS IN AND FOR THE SAID TERRITORY, Respondents and Appellees.

Known all men by these presents that we, James L. Utter and Elizabeth B. Voorhies, as principals, and John A. Black and Rollin R. Richardson, residents of the Territory of Arizona, as sureties, are held and firmly bound unto the respondents and appellees in the penal sum of one thoudans dollars, lawful money of the United States, to be paid to the said respondents and appellees, and for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, and assigns, firmly by these presents.

Sealed with our seals and dated this 15th day of March, A. D. 1897.

Whereas the above-named James L. Utter and Elizabeth B. Voorhies have taken an appeal to the Supreme Court of the United States, and the same having been allowed, from a final judg-
25 ment rendered against them and in favor of the respondents and appellees in the supreme court of the Territory of Arizona to reverse the judgment rendered in said court:

Now, therefore, the condition of this obligation is such that if the above-named James L. Utter and Elizabeth B. Voorhies shall prosecute their said appeal with effect and, if they fail to make their plea good, shall answer all costs, then this obligation shall be void; otherwise to remain in full force and virtue.

JAMES L. UTTER, [SEAL.]
By WM. H. BARNES, *His Attorney.*
ELIZABETH B. VOORHIES, [SEAL.]
By WM. H. BARNES, *Her Attorney.*
JOHN A. BLACK. [SEAL.]
ROLLIN R. RICHARDSON. [SEAL.]

UNITED STATES OF AMERICA, } ss:
Territory of Arizona, County of Pima, }

Rollin R. Richardson and John A. Black, being severally duly sworn, depose and say each for himself that he is a resident and freeholder within the Territory of Arizona; that he is at least worth the sum of one thousand dollars over and above his just debts and liabilities and exclusive of property exempt from execution.

26 JOHN A. BLACK.
ROLLIN R. RICHARDSON.

Subscribed and sworn to before me this 15th day of March, A. D. 1897.

[SEAL.] JOHN H. MARTIN,
Notary Public, Pima County, Ariz.

The within bond is hereby approved this 16th day of March, A. D. 1897.

A. C. BAKER,
Chief Justice.

(Endorsement:) No. 546. In the supreme court. Utter *et al. vs. Voorhies.* Appeal bond. Filed March 16, 1897. J. L. B. Alexander, clerk.

In the Supreme Court in and for the Territory of Arizona.

JAMES L. UTTER *et als.*, Plaintiff-,
vs.
LOAN COMMISSIONERS OF ARIZONA, Respondents.

27 The above-named plaintiffs, conceiving themselves aggrieved by the final judgment entered on the 23rd day of February, A. D. 1897, in the above-entitled action and court against them and in favor of respondents, do*es* hereby appeal therefrom to the Supreme Court of the United States; and they having prayed an appeal in this cause in said court in open court that the said appeal be allowed, and the said court having allowed said appeal upon condition that plaintiffs execute a bond, conditioned according to law, in the sum of one thousand dollars, to be approved according to law, and the said plaintiffs having caused a bond to be filed, conditioned according to law and approved according to law, and a citation having been duly signed and issued, and the service of the same having been waived by the attorney general of the Territory for and on behalf of the respondents, and their appearance in said cause having been endorsed on the back of said citation, plaintiffs pray that a transcript of the record, proceedings, opinion, and judgment, duly authenticated, may be sent to the Supreme Court of the United States.

W. H. BARNES,
Attorney for Plaintiffs.

(Endorsement:) No. 546. In the supreme court. James L. Utter *et al.*, plaintiffs, *vs.* Loan Commissioners of Arizona, respondents. Application for appeal. Filed March 23, 1897. J. L. B. Alexander, clerk.

28 In the Supreme Court of the United States.

JAMES L. UTTER and ELIZABETH B. VOORHIES, Petitioners and Appellees,
vs.
B. J. FRANKLIN, Governor; C. P. LEITCH, Auditor, and C. M. Bruce, Secretary, Loan Commissioners of the Territory of Arizona, Respondents and Appellees.

The United States of America to B. J. Franklin, governor; C. P. Leitch, auditor, and C. M. Bruce, secretary, loan commissioners of the Territory of Arizona, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, D. C., on the second Monday in October, A. D. 1897, pursuant to an appeal allowed by the honorable chief justice of the supreme court of Arizona on the — day of ——, A. D. 1897, from a judgment rendered in the supreme court of the Territory of Arizona on the — day of ——, A. D. 1897, in an action pending in that court wherein you were the defendants and respondents and the said James L. Utter and Elizabeth B. Voorhies were plaintiffs and petitioners, to show cause why that said judgment in your favor should not be set aside, reversed, corrected, and speedy justice should not be done to the parties in whose behalf said appeal is allowed.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of March, A. D. 1897.

A. C. BAKER,
Chief Justice of the Supreme Court of the Territory of Arizona.

29 I, J. F. Wilson, attorney general of the Territory of Arizona, hereby acknowledge service of the above citation for and in behalf of B. J. Franklin, governor; C. P. Leitch, auditor, and C. M. Bruce, secretary, and loan commissioners of the Territory of Arizona, a copy of the same having been served on me this 16th day of March, A. D. 1897.

J. F. WILSON,
Attorney General, Territory of Arizona.

30 [Endorsed:] No. 546. In the supreme court, Territory of Arizona. James L. Utter and Elizabeth B. Voorhies *vs.* Loan Commissioners of the Territory of Arizona. Citation. Lodged in my office this 16th day of March, A. D. 1897. J. L. B. Alexander, clerk supreme court of Arizona Territory.

Endorsed on cover: Case No. 16,556. Arizona Territory supreme court. Term No., 777. James L. Utter and Elizabeth B. Voorhies, appellants, *vs.* B. J. Franklin, governor; C. P. Leitch, auditor, and C. M. Bruce, secretary, loan commissioners of the Territory of Arizona. Filed April 8th, 1897.